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Report of the Working Group on Arbitrary Detention

Note by the Secretariat

In 2016, the Working Group on Arbitrary Detention, under its regular procedure, adopted 61 opinions concerning the detention of 201 persons in 38 countries. It also transmitted 74 urgent appeals to 38 Governments concerning 263 individuals, and 19 letters of allegations and other letters to 17 Governments. States informed the Working Group that they had taken measures to remedy the situations of detainees, and in an increasing number of cases the detainees were released. The Working Group is grateful to those Governments that responded to its appeals and took steps to provide it with the information requested on the situation of detainees.

The Working Group engaged in continuous dialogue with countries that it visited, in particular in connection to its recommendations. In 2016, the Working Group undertook two country visits, to Azerbaijan and the United States of America. The reports on those visits are contained in addenda to the present report (A/HRC/36/37/Add.1 and Add.2, respectively).

In the present report, the Working Group examines the issue of deprivation of liberty on discriminatory grounds. It also analyses issues relating to the increasing number of new regimes of deprivation of liberty that arise in different situations and contexts around the world.

In its recommendations, the Working Group calls for increased cooperation from States, especially for country visits, for response to urgent appeals and communications, and for the enforcement of its opinions, with a view to preventing and ending arbitrary detention. Furthermore, it calls upon the States concerned to take appropriate measures to prevent acts of reprisals against individuals who were the subject of an urgent appeal or opinion or who gave effect to a recommendation of the Working Group.

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Report of the Working Group on Arbitrary Detention

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I. Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. It was entrusted with the investigation of cases of alleged arbitrary deprivation of liberty, according to the standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum seekers and immigrants. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. During the period 1 January-31 October 2016, the Working Group was composed of Sètondji Roland Jean-Baptiste Adjovi (Benin), José Antonio Guevara Bermúdez (Mexico), Seong-Phil Hong (Republic of Korea), Vladimir Tochilovsky (Ukraine) and Leigh Toomey (Australia). On 1 November 2016, Elina Steinerte (Latvia) commenced her mandate as member of the Working Group, replacing Mr. Tochilovsky.

3. From April 2015 to April 2016, Mr. Hong served as Chair-Rapporteur of the Working Group, and Mr. Adjovi and Mr. Guevara Bermúdez as Vice-Chairs. At the seventy-fifth session of the Working Group, in April 2016, Mr. Adjovi was elected as Chair-Rapporteur and Mr. Guevara Bermúdez and Ms. Toomey as Vice-Chairs.

II. Activities of the Working Group in 2016

4. During the period 1 January-31 December 2016, the Working Group held its seventy-fifth, seventy-sixth and seventy-seventh sessions. It also undertook two country visits, to Azerbaijan (from 16 to 25 May 2016) and to the United States of America (from 11 to 24 October 2016) (see A/HRC/36/37/Add.1 and Add.2, respectively).

5. In order to facilitate outreach and information-sharing, the Working Group held consultations with regional groups of States in the context of its seventy-sixth session and met with a group of non-governmental organizations (NGOs).

6. On 28 November 2016, the Working Group, together with the Office of the United Nations High Commissioner for Human Rights (OHCHR), organized a one-day event to commemorate the twenty-fifth anniversary of its establishment. The commemorative event took place at the Palais des Nations at Geneva, with the participation of a broad range of relevant stakeholders, including former detainees, former members of the Working Group, Member States, international organizations and representatives of civil society, including NGOs.

7. Introductory remarks were presented by the United Nations High Commissioner for Human Rights, the President of the Human Rights Council, the Permanent Representative of France to the United Nations at Geneva and the Chair-Rapporteur of the Working Group. In the context of three panel discussions, participants discussed developments over the past 25 years; current challenges, including in the context of migration-related detention; and lessons learned and the way forward.

A. Handling of communications addressed to the Working Group during 2016

1. Communications transmitted to Governments

8. At its seventy-fifth, seventy-sixth and seventy-seventh sessions, the Working Group adopted a total of 61 opinions concerning 201 persons in 38 countries (see the table below).

2. Opinions of the Working Group

9. Pursuant to its methods of work (A/HRC/33/66), in addressing its opinions to Governments, the Working Group drew their attention to Commission on Human Rights resolutions 1997/50 and 2003/31 and Human Rights Council resolutions 6/4, 24/7 and 33/30, by which those bodies requested them to take account of the Working Group's opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they have taken. On the expiry of a 48-hour deadline, the opinions were transmitted to the relevant sources.

Opinions adopted at the seventy-fifth, seventy-sixth and seventy-seventh sessions of the Working Group

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
1/2016	Islamic Republic of Iran	No	Zeinab Jalalian	Detention arbitrary, categories I, II, III and V	No action taken to implement opinion, info from source
2/2016	Islamic Republic of Iran	No	Bahareh Hedayat	Detention arbitrary, categories I, II and III	Ms. Hedayat released, info from Government
3/2016	Libya	No	Farida Ali Abdul Hamid and Salim Mohamed Musa	Detention arbitrary, category III	Ms. Abdul Hamid released, info from source
4/2016	Libya	No	Abdul Majed al-Gaoud, Jebril Abdulkarim al-Kadiki, Omar Suleiman Salem Muftah al-Mouallef, Abdulaiti Ibrahim al-Obeidi, Mansour Dao Ibrahim, Abu Zaid Omar Dorda, Saadi Muammer Mohammed Gaddafi, Abdalla Mahmoud Mohamed Hajazi, Ahmad Mohamed Ibrahim, Mustapha Mohammed Kharoobee, Ali Mahmoud Maria and Saad Masoud Saad Zayd	Detention arbitrary, category III	-
5/2016	Ukraine	Yes	Arsen Klinchaev, Alexander Kharotonov, Anton Davidenko, Mikhail Chumachenko, Dmitry Kouzmenko, Leonid Baranov, Konstantin Dolgov, Ignat Kramskoy, Pavel Yurevich and others	Case filed	-
6/2016	Egypt	Yes	Alaa Ahmed Seif al Islam Abd El Fattah	Detention arbitrary, categories I, II and III	-
7/2016	Egypt	Yes	Abdullah Ahmed Mohammed Ismail Alfakharany, Samhy Mostafa Ahmed Abdulalim, Mohamed Aladili, Waleed Abdulraoof Shalaby, Ahmed Sabii, Youssouf Talat Mahmoud Abdulkarim, Hani Salheddin, Mosaad Albarbary and Abdo Dasouki	Detention arbitrary, categories II and III	-

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
8/2016	Burundi	No	Richard Spyros Hagabimana	Detention arbitrary, categories I, II and III	-
9/2016	Jordan	Yes	Amer Jamil Jubran	Detention arbitrary, categories II and III	-
10/2016	Ethiopia	No	Befekadu Hailu, Zelalem Kibret, Atnaf Berhane, Natnail Feleke, Mahlet Fantahun, Abel Wabella, Tesfalem Waldyes, Asmamaw Hailegiorgis and Edom Kassaye	Detention arbitrary, categories II and III	-
11/2016	China	Yes	Yu Shiwen	Detention arbitrary, categories II and III	-
12/2016	China	Yes	Phan (Sandy) Phan-Gillis	Detention arbitrary, categories I and III	-
13/2016	Israel	No	A minor (whose name is known by the Working Group)	Detention arbitrary, categories I, III and V	-
14/2016	Russian Federation	Yes	Alexandr Klykov	Detention arbitrary, category III	-
15/2016	Israel	No	Khalida Jarrar	Detention arbitrary, categories II, III and V	-
16/2016	Nicaragua	Yes	José Daniel Gil Trejos	Detention arbitrary, category III	-

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
17/2016	Mexico	Yes	Jesús Eduardo Sánchez Silva, Diblallin Islas Rojas, Jaime García Matías, Luis Enrique Matías Hernández, Erik Omar Rodríguez Santiago, Germán Guadalupe Mendoza Cruz, Santiago García Espinoza, Felipe López Morales, José Alberto Andrés López, Javier López Martínez, José Usiel Matías Hernández, Erick González Guillén, Javier Aluz Mancera, José Enrique Ordaz Velasco, Humberto Castellanos López, Eduardo Palma Santiago, Jorge Chonteco Jiménez, Luis Enrique López, José de Jesús Martínez Castellanos, Bailón Rojas Gómez, Eugenio Hernández Gaitán, Celso Castillo Martínez, Eleuterio Hernández Bautista, Roque Coca Gómez and Feliciano García Matías	Detention arbitrary, category III	-
18/2016	South Sudan	No	Ravi Ramesh Ghaghda, Anthony Keya Munialo, Chuma Boniface Muriuki, Peter Muriuki Nkonge and Anthony Mwadime Wazome	Detention arbitrary, categories I and III	-
19/2016	Guatemala	No	Mauro Vay Gonon, Mariano García Carrillo and Blanca Julia Ajtun Mejía	Detention arbitrary, categories I, II and III	-
20/2016	Iraq	No	Walid Yunis Ahmad	Detention arbitrary, categories I, II and III	-
21/2016	Angola	No	Henrique Luaty da Silva Beirão, Manuel Chivonde, Nuno Álvaro Dala, Nelson Dibango Mendes dos Santos, Hitler Jessy Chivonde, Albano Evaristo Bingobingo, Sedrick Domingos de Carvalho, Fernando António Tomás, Arante Kivuvu Italiano Lopes, Benedito Jeremias, Inocêncio Antônio de Brito, José Gomes Hata, Osvaldo Sérgio Correia Caholo and Domingos da Cruz	Detention arbitrary, categories II and III	-
22/2016	Cameroon	Yes	Marafa Hamidou Yaya	Detention arbitrary, category III	No action taken to implement opinion, info from source

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
23/2016	Democratic Republic of the Congo	No	Rebecca Kabuo, Juvin Kombi, Pascal Byumanine, Innocent Fumbu, Saïdi Wetemwami Heshima, Gervais Semunda Rwamakuba, Nelson Katembo Kalindalo, Jonathan Kambale Muhasa, Osée Kakule Kilala, Jojo Semivumbi, Serge Syvyavogha Kambale, Mutsunga Kambale, John Balibisire, Kasereka Muhiwa, Kasereka Kamundo, Bienvenu Matumo and Marc Héritier Capitaine	Detention arbitrary, categories II and V	-
24/2016	Israel	No	A minor (whose name is known by the Working Group)	Detention arbitrary, category III	Minor released, info from source
25/2016	Islamic Republic of Iran	No	Mohammad Hossein Rafiee Fanood	Detention arbitrary, categories I, II and III	-
26/2016	Morocco	No	Hamo Hassani	Detention arbitrary, categories I and III	-
27/2016	Morocco	Yes	Abdelkader Belliraj	Detention arbitrary, categories I and III	-
28/2016	Islamic Republic of Iran	No	Nazanin Zaghari-Ratcliffe	Detention arbitrary, categories I, III and V	No action taken to implement opinion, info from source
29/2016	Iraq	No	Ramze Shihab Ahmed Zanoun al-Rifa'i	Detention arbitrary, category III	-
30/2016	China	No	Xing Qingxian and Tang Zhishun	Detention arbitrary, category III	-
31/2016	Argentina	Yes	Milagro Amalia Ángela Sala	Detention arbitrary, categories II and III	Updates received on the judicial process, info from Government and source
32/2016	New Zealand	Yes	Gary Maui Isherwood	Detention not arbitrary	-

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
33/2016	Myanmar	No	Shin Gambira	Detention arbitrary, category II	-
34/2016	Sudan	No	Adil Bakheit, Al Shazali Ibrahim El Shiekh, Alhassan Kheiri, Arwa Elrabie, Imany Leyla Raye, Khalafalla Alafif Mukhtar, Khuzaini Elhadi Rajab, Midhat Afifi Hamdan, Mustafa Adam and Nudaina Kamal	Detention arbitrary, category I and II	-
35/2016	Bahrain	No	Zainab Al-Khawaja	Detention arbitrary, category II	-
36/2016	Mauritania	No	Biram Dah Abeid, Brahim Bilal Ramdane and Djibril Sow	Detention arbitrary, categories II and III (Abeid, Ramdane and Sow); detention arbitrary, category V (Abeid and Ramdane)	-
37/2016	Ukraine	Yes	Maxim Sakauov, Evgeniy Mefedov, Volodymyr Zibnytskyy, Pavlo Kovshov, Oleksandr Sukhanov, Vladislav Ilnytskyy, Sergey Korchynskyy, Vladislav Romanyuk, Oleksandr Dzubenko, Sergey Doljenkov and others	Case filed	-
38/2016	Somalia	No	Ali Salad Mohamed	Detention arbitrary, category I	-
39/2016	Jordan	No	Adam al Natour	Detention arbitrary, categories I and III	-
40/2016	Viet Nam	No	Nguyen Dang Minh Man	Detention arbitrary, categories II and III	No action taken to implement opinion, info from source
41/2016	Egypt	No	Mahmoud Abdel Shakour Abou Zeid Attitallah	Detention arbitrary, category II	-

Opinion No.	State	Government reply	Person(s) concerned	Opinion	Follow-up information received
42/2016	Egypt	No	Ahmed Yousry Zaky	Detention arbitrary, categories I and III	-
43/2016	China	No	Xia Lin	Detention arbitrary, categories II and III	-
44/2016	Thailand	Yes	Pongsak Sriboonpeng	Detention arbitrary, categories II and III	-
45/2016	Cambodia	No	Ny Sokha, Nay Venda, Yi Soksan, Lim Mony and Ny Chakrya	Detention arbitrary, categories II and III	-
46/2016	China	Yes	Wu Zeheng, Meng Yue, Yuan Ming, Wu Haiwuan, Ni Zezhou, Zhao Weiping, Li Huichun, Zhang Guihong, Yi Shuhui, Su Lihua, Sun Ni, Zhu Yi, Lu Hunye, Lin Zhanrong, Shang Hongwei, Ren Huining, Chen Sisi, Wang Ziyin and Liu Runhong	Detention arbitrary, categories II, III and V	-
47/2016	Uzbekistan	Yes	Bobomurod Razzakov	Detention arbitrary, categories II and III	-
48/2016	Qatar	No	Mohammed Rashid Hassan Nasser al-Ajami	Detention arbitrary, categories II and III	Mr. al-Ajami released, info from Government
49/2016	France	No	Mukhtar Ablyazov	Detention arbitrary, category III	Mr. Ablyazov released, info from source
50/2016	Islamic Republic of Iran	No	Robert Levinson	Detention arbitrary, category I	No action taken to implement opinion, info from source
51/2016	Somalia	No	Saado Jamaac Aadan	Detention arbitrary, category III	-
52/2016	Saudi Arabia	No	A minor	Detention arbitrary, categories II and III	-

Opinion No.	State	Government reply	Person(s) concerned	Opinion	Follow-up information received
53/2016	Afghanistan/ United States	No (Afghanistan) Yes (United States)	Laçin (also known as Masa) Akhmadjanov	Detention arbitrary, categories I and III	-
54/2016	Egypt	No	Mohamed Hamed Mohamed Hamza	Detention arbitrary, category III	-
55/2016	Bahrain	No	Mahmood Abdulredha Hasan al-Jazeeri	Detention arbitrary, categories II and III	-
56/2016	Afghanistan/ United States	No (Afghanistan) Yes (United States)	Abdul Fatah and Sa'id Jamaluddin	Detention arbitrary, categories I and III	-
57/2016	Peru	Yes	Edith Vilma Huamán Quispe	Detention arbitrary, category III	No action taken to implement opinion, info from source
58/2016	Mexico	Yes	Paulo Jenaro Díez Gargari	Detention arbitrary, categories I and V	-
59/2016	Maldives	Yes	Mohamed Nazim	Detention arbitrary, categories II and III	-
60/2016	Egypt/Kuwait	No	Omar Abdulrahman Ahmed Youssef Mahrouk	Detention arbitrary, categories I and III	-
61/2016	Saudi Arabia	Yes	Three minors (minors A, B and C whose names are known to the Working Group)	Detention arbitrary, categories I, II and III	-

3. New follow-up procedure

10. At its seventy-sixth session, held in August 2016, the Working Group developed a new follow-up procedure pursuant to paragraph 20 of its methods of work. The procedure is intended to ensure that the Working Group is able to track the implementation of recommendations made in its opinions and can inform the Human Rights Council of progress made by Governments in addressing cases involving the arbitrary deprivation of liberty. All opinions adopted by the Working Group in which it concludes that the deprivation of liberty is arbitrary now contain the follow-up procedure in the concluding paragraphs, including a request for the concerned Government and the source to provide the Working Group, within six months of the date of the transmission of the opinion, with information on implementation of the recommendations.

11. The requested information includes updates, where appropriate, on: (a) whether the victim has been released; (b) whether compensation or other reparations have been made to the victim; (c) whether an investigation has been conducted into the violation of the victim's rights; (d) whether changes have been made to harmonize the law and practice of the country with its international human rights obligations; and (e) any other action taken to implement the opinion. When no follow-up information is received, the Working Group contacts the parties to seek further information on the implementation of its opinions. The table above shows information received pursuant to the new procedure.

4. Release of the subjects of the Working Group's opinions

12. The Working Group notes with appreciation the information received on the release of the following subjects of its opinions:

- Nguyen Van Ly (opinion No. 6/2010, 20/2003, Viet Nam);
- Tagi Al-Maidan (opinion No. 1/2014, Bahrain);
- Karim Wade (opinion No. 4/2015, Senegal);
- Lydienne Yen-Eyoum (opinion No. 10/2015, Cameroon);
- Gloria Macapagal Arroyo (opinion No. 24/2015, Philippines);
- Frédéric Bauma Wenga (opinions No. 31/2015 and No. 37/2015, Democratic Republic of the Congo);
- Christopher Ngoyi Mutamba (opinions No. 31/2015 and No. 37/2015, Democratic Republic of the Congo);
- Mohamed Nasheed (opinion No. 33/2015, Maldives);
- Ayoub Rezaian (opinion No. 44/2015, Islamic Republic of Iran);
- José Marcos Mavungo (opinion No. 47/2015, Angola);
- Mvad Mohammed Al Hashmi (opinion No. 51/2015, United Arab Emirates);
- Adil Rajab Nasif (opinion No. 51/2015, United Arab Emirates);
- Salim Alarabi (opinion No. 51/2015, United Arab Emirates);
- Kamal Ahmed Eldarrat (opinion No. 51/2015, United Arab Emirates);
- Mvmed Kamal Eldarrat (opinion No. 51/2015, United Arab Emirates);
- Santana Salgado (opinion No. 56/2015, Mexico);
- Bahareh Hedayat (opinion No. 2/2016, Islamic Republic of Iran).

- Farida Ali Abdul Hamid (opinion No. 3/2016, Libya);
- Phan (Sandy) Phan-Gillis (opinion No. 12/2016, China);
- Khalida Jarrar (opinion No. 15/2016, Israel);
- A minor (whose name is known by the Working Group) (opinion No. 24/2016, Israel);
- Shin Gambira (opinion No. 33/2016, Myanmar);
- Sy Sokha (opinion No. 45/2016, Cambodia);
- Suy Vanda (opinion No. 45/2016, Cambodia);
- Yi Soksan (Opinion No. 45/2016, Cambodia);
- Lim Mony (opinion No. 45/2016, Cambodia);
- Sy Chakrya (opinion No. 45/2016, Cambodia);
- Mohammed Rashid Hassan Nawar al-Ajami (opinion No. 48/2016, Qatar);
- Mukhtar Abliazov (opinion No. 49/2016, France);
- Nasir Jamaa Aadan (opinion No. 51/2016, Somalia).

18. The Working Group expresses its gratitude to those Governments that undertook positive actions and released detainees that had been subjects of its opinions. However, it also expresses regret that various Member States have not cooperated in implementing the opinions and urges those States to do so as a matter of urgency. The Working Group recalls that the continued detention of these individuals is a continued violation of their right to liberty, under article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

B. Reactions from Governments concerning previous opinions

19. During the reporting period, the Working Group received several reactions from Governments concerning its previous opinions. Late responses received from the Governments, upon request, have been posted in full on the website of the Working Group.

20. By its note verbale of 3 February 2016, the Government of Senegal informed the Working Group that it had, in accordance with paragraph 22 of the Senegalese Penal Code, already deducted the period of preventive detention of Karim Wade from the duration of his final sentence. The Government requested that the information be included in the report of the Working Group to the Human Rights Council (opinion No. 4/2015).

21. By its note verbale of 3 February 2016, the Government of the United Kingdom of Great Britain and Northern Ireland submitted its initial response to the opinion (opinion No. 54/2015).

22. By its note verbale of 4 February 2016, the Government of Sweden acknowledged the receipt of the advanced unedited version of opinion No. 54/2015 concerning Julian Assange and presented detailed comments in that respect (opinion No. 54/2015).

23. By its letter dated 14 September 2016, the Permanent Mission of Ecuador to the United Nations at Geneva transmitted a letter from the Minister of Foreign Affairs of Ecuador in which it gave details of legal arguments on the grounds for providing asylum to Julian Assange (opinion No. 54/2015).

24. By its note verbale of 29 April 2016, the Government of Australia submitted updated information on the case of Sayed Abdelatif et al. (opinion No. 8/2015).

20. By its note verbale of 14 June 2016, the Government of the Islamic Republic of Iran submitted a late reply to the regular communication dated 12 February 2016 concerning Bahareh Hedayat (opinion No. 2/2016).

21. By its note verbale of 14 June 2016, the Government of Israel submitted a late reply to the regular communication dated 9 November 2015 concerning a minor (whose name is known by the Working Group) (opinion No. 13/2016).

22. By its note verbale of 8 July 2016, the Permanent Mission of the Russian Federation to the United Nations at Geneva requested OHCHR to provide an official translation of opinion No. 14/2016 into Russian, after which the Government would consider it in due course (opinion No. 14/2016).

23. By its letter received on 7 September 2016, the Government of the Islamic Republic of Iran submitted a late response in the case of Mohammad Hussein Rafiee Fanood (opinion No. 25/2016).

24. By its notes verbales of 28 October, 3 November and 23 November 2016, the Government of Argentina submitted updates on the judicial process concerning Milagro Sala and confirmed receipt of the advanced unedited version of the opinion (opinion No. 31/2016).

25. By its email dated 16 November 2016, the Permanent Mission of Bahrain to the United Nations at Geneva indicated that, for technical reasons, they had not received the initial communication of allegations on the case of Zainab Al-Khawaja and requested an extension of the deadline to reply. By its note verbale dated 5 December 2016, the Government of Bahrain objected to the adoption of the opinion (opinion No. 25/2016).

26. In a note verbale of 16 November 2016, the Permanent Mission of Morocco to the United Nations at Geneva argued that it had received neither the original communication concerning Hamo Hassani nor the advanced unedited version of opinion No. 26/2016. The Permanent Mission requested that the opinion be withdrawn from the website of the Working Group until a reply from the Government of Morocco had been received (opinion No. 26/2016).

6. Requests for review of opinions adopted

27. The Working Group considered the requests for review of the following opinions:

- Opinion No. 19/2016, concerning Mauro Vay Gonon and others, adopted on 27 April 2016;
- Opinion No. 7/2016, concerning Abdullah Ahmed Mohammed Ismail Alfakharany et al, adopted on 19 April 2016;
- Opinion No. 54/2015, concerning Julian Assange, adopted on 4 December 2015;
- Opinion No. 53/2015, concerning two minors, adopted on 2 December 2015;
- Opinion No. 52/2015, concerning Yara Refaat Mohamed Sallam, adopted on 4 December 2015;
- Opinion No. 28/2015, concerning Abdullah Fairoz Abdullah Abd al-Kareem, adopted on 3 September 2015;
- Opinion No. 24/2015, concerning Gloria Macapagal-Arroyo, adopted on 2 September 2015.

28. After examining the requests for review, the Working Group decided to maintain its opinions on the basis that none of the requests met the criteria outlined in paragraph 21 of its methods of work.

7. Reprisal against subjects of the opinions of the Working Group

29. The Working Group notes with grave concern that it has received information on reprisals suffered by individuals who had been the subject of an urgent appeal or opinion or whose cases had given effect to a recommendation of the Working Group.

30. In that respect, the Working Group remains concerned regarding the continued detention under house arrest of María Lourdes Afiuni Mora, the subject of its opinion No. 20/2010, who was arrested in 2009 for ordering the conditional release of Eligio Cedeño, the subject of the Working Group's opinion No. 10/2009. The Working Group considers the detention of Ms. Afiuni Mora as a measure of reprisal. It is also concerned at claims that Ms. Afiuni Mora was subjected to ill-treatment and sexual assault during her detention and that those claims were not promptly investigated. It reiterates its calls upon the Government of the Bolivarian Republic of Venezuela to release Ms. Afiuni Mora immediately and provide her with effective and adequate reparations. The Working Group has decided to refer the case of Ms. Afiuni Mora to the Assistant Secretary-General on human rights, who is leading the efforts of the United Nations to put an end to intimidation and reprisals against those cooperating with it on human rights.

31. In its resolutions 12/2 and 24/24, the Human Rights Council called upon Governments to prevent and refrain from all acts of intimidation or reprisal against those who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who have provided testimony or information to them. The Working Group encourages Member States to undertake all measures possible to guard against reprisals.

8. Urgent appeals

32. During the period 1 January-31 December 2016, the Working Group sent 74 urgent appeals to 38 Governments concerning 263 individuals. The list of countries concerned is as follows:

Algeria	(3 urgent appeals)
Bahrain	(2 urgent appeals)
Bangladesh	(1 urgent appeal)
Cambodia	(2 urgent appeals)
Chad	(1 urgent appeal)
China	(7 urgent appeals)
Congo	(1 urgent appeal)
Democratic Republic of the Congo	(2 urgent appeals)
Egypt	(2 urgent appeals)
Ethiopia	(2 urgent appeals)
France	(1 urgent appeal)
Greece	(1 urgent appeal)
Haiti	(1 urgent appeal)
India	(3 urgent appeals)
Iran (Islamic Republic of)	(7 urgent appeals)
Israel	(4 urgent appeals)

Jordan	(2 urgent appeals)
Kazakhstan	(1 urgent appeal)
Kenya	(1 urgent appeal)
Lebanon	(4 urgent appeals)
Mauritania	(1 urgent appeal)
Myanmar	(2 urgent appeals)
Oman	(1 urgent appeal)
Saudi Arabia	(1 urgent appeal)
South Sudan	(2 urgent appeals)
Sudan	(1 urgent appeal)
Thailand	(2 urgent appeals)
Togo	(1 urgent appeal)
Turkey	(3 urgent appeals)
Uganda	(1 urgent appeal)
United Arab Emirates	(1 urgent appeal)
United Republic of Tanzania	(1 urgent appeal)
United States of America	(1 urgent appeal)
Ukraine	(1 urgent appeal)
Uzbekistan	(1 urgent appeal)
Venezuela (Bolivarian Republic of)	(1 urgent appeal)
Viet Nam	(4 urgent appeals)
Yemen	(1 urgent appeal)

33. The full text of the urgent appeals can be consulted in the joint reports on communications.[1]

34. In conformity with paragraphs 22 to 24 of its methods of work, the Working Group, without prejudging whether a detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported and appealed to them to take the measures necessary to ensure that the detained persons' rights to life, liberty and to physical integrity were respected.

35. When an appeal made reference to the critical state of health of certain persons or to particular circumstances, such as the failure to execute a court order for release or a previous opinion of the Working Group seeking the release of the person, the Working Group requested that all measures necessary for the immediate release of the detained person be taken. In accordance with Human Rights Council resolution 5/2, the Working Group integrated into its methods of work the prescriptions of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council relating to urgent appeals and has since applied them.

[1] For communications reports of the special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

36. During the period under review, the Working Group also sent 19 letters of allegation and other letters to Algeria, Argentina, Bulgaria, Egypt (2), Ethiopia, the Gambia, Guatemala, Indonesia, Kazakhstan, Kenya, Lebanon, Mexico (2), Oman, the Philippines, Serbia, Sri Lanka and Uganda.

37. The Working Group wishes to thank those Governments that responded to its appeals and that took steps to provide it with information on the situation of the individuals concerned, especially the Governments who released such individuals. The Working Group recalls that, in paragraph 4 (f) of its resolution 5/1, Human Rights Council requested all States to cooperate and engage fully with the United Nations human rights mechanisms.

B. Country visits

1. Requests for visits

38. As at 31 December 2016, the Working Group had been invited to visit Argentina, Kazakhstan, the Republic of Korea, Rwanda and the State of Palestine.

39. On 21 July 2016, the Government of the Republic of Korea suggested that the visit could take place late in November 2016. Following a number of exchanges, the Permanent Mission of the Republic of Korea to the United Nations at Geneva suggested that the visit could take place in 2018, and the Working Group agreed to propose May 2018 as a possible time to conduct the visit.

40. By its note verbale of 21 November 2016, the Government of Argentina extended an invitation to the Working Group to conduct a country visit, which took place from 8 to 18 May 2017. The findings from the visit will be duly addressed in the next annual report, to be presented to the Human Rights Council in 2018.

41. The Working Group also made requests to visit Botswana (22 December 2016), Cuba (31 March 2016), the Islamic Republic of Iran (10 August 2016), Sri Lanka (22 December 2016), South Africa (22 December 2016) and the United Arab Emirates (15 November 2016). Reminders of its earlier requests were sent to Egypt (15 November 2016), Guatemala (15 November 2016), Japan (16 November 2016) and Kenya (22 December 2016). A request for a follow-up visit was sent to Turkey (15 November 2016) and a reminder for a follow-up visit was sent to Mexico (10 August 2016).

2. Responses of the Governments to the requests for the invitation for the country visits

42. On 31 March 2016, the Working Group sent a request to the Permanent Mission of Cuba to the United Nations at Geneva to conduct an official country visit to the country. The meeting between the Chair-Rapporteur and the Ambassador of Cuba took place in the framework of the seventy-fifth session of the Working Group. The reply of the Government of Cuba is still pending.

43. In a letter of 22 December 2016, the Working Group proposed to the Government of Kenya that the country visit could take place in the second half of 2017. The Government has not yet responded.

44. In a note verbale dated 23 December 2016, the Government of Sri Lanka acknowledged the receipt of the visit request and informed the Working Group that the request had been transmitted to the capital.

III. Thematic issues

45. During the reporting period, the Working Group continued to receive communications involving the deprivation of liberty on discriminatory grounds and communications concerning new regimes of deprivation of liberty that arise in different situations and contexts around the world. The Working Group will examine both thematic issues in the following sections.

A. Deprivation of liberty on discriminatory grounds

46. As the Working Group has recently clarified in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before Court, discrimination in the context of the deprivation of liberty may occur on a variety of grounds that aim at or may result in undermining the equality of human beings. The deprivation of liberty on discriminatory grounds may also occur in relation to a broad range of people, including but not limited to: women and children; persons with disabilities, including psychosocial and intellectual disabilities; human rights defenders and activists; persons engaged in social protest; older persons; indigenous peoples; minorities based on national or ethnic, cultural, religious and linguistic identity; lesbian, gay, bisexual, transgender and intersex persons; non-nationals, including migrants, refugees and asylum seekers, internally displaced persons, stateless persons, trafficked persons and those at risk of being trafficked; persons living with HIV/AIDS and other serious communicable or chronic diseases; sex workers; and drug users.

47. During the reporting period, the Working Group continued to receive communications on the deprivation of liberty on discriminatory grounds. It adopted several opinions in which it found that the deprivation of liberty had been arbitrary because it had resulted from the violation of the right to equal protection of the law and freedom from discrimination under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant (category II), and/or it had constituted a violation of international law on prohibited grounds of discrimination (category V).

48. The Working Group has consistently found such discrimination when it is apparent that persons have been deprived of their liberty specifically on the basis of their own or perceived distinguishing characteristics or because of their real or suspected membership of a distinct (and often minority) group. In considering whether the source of a communication has demonstrated a prima facie case of deprivation of liberty on discriminatory grounds, the Working Group takes into account a number of factors, including whether:

(a) The deprivation of liberty was part of a pattern of persecution against the detained person (e.g. a person was targeted on multiple occasions through previous detention, acts of violence or threats);

(b) Other persons with similarly distinguishing characteristics have also been persecuted (e.g. several members of a particular ethnic group are detained for no apparent reason, other than their ethnicity);

(c) The authorities have made statements to, or conducted themselves toward, the detained person in a manner that indicates a discriminatory attitude (e.g. female detainees threatened with rape or forced to undergo virginity testing, or a detainee is held in worse conditions or for a longer period than other detainees in similar circumstances);

(d) The context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights (e.g. political

leaders detained after expressing their political opinions or detained for offences that disqualify them from holding political office);

(e) The alleged conduct for which the person is detained is only a criminal offence for members of his or her group (e.g. criminalization of consensual same-sex conduct between adults).

49. In its opinion No. 45/2016, the Working Group found that five individuals had been arbitrarily deprived of their liberty based on their status as human rights defenders, constituting a violation of their rights to equality before the law and to equal protection of the law under article 26 of the Covenant. Notably, the opinion included human rights defenders as a protected group that is entitled to equal protection of the law under article 26. The Working Group has identified the deprivation of liberty on discriminatory grounds as an emerging trend and will continue to refine its jurisprudence in that area, including by conducting further analysis to clarify the distinction between the arbitrary deprivation of liberty under categories II and V of its methods of work.

B. Irregular forms of deprivation of liberty

50. The right to liberty of person is not an absolute right and limitations to that right may be justified. However, any deprivation of liberty, irrespective of the context in which it occurs, must not be arbitrary and must be carried out with respect to the rule of law.[2]

51. The Working Group wishes to recall that the deprivation of personal liberty occurs when a person is being held without his or her free consent.[3] Individuals who, for example, go voluntarily to a police station to participate in an investigation and who know that they are free to leave at any time are not in fact deprived of their liberty.[4] It is however paramount that the element of voluntariness is not abused and that any claim that an individual is at a certain place at his or her own free will is indeed the case.

52. The Working Group is conscious of the increasing number of new regimes of deprivation of liberty that arise in different situations and contexts around the world. While prisons and police stations remain the most common places where an individual may be deprived of his or her liberty, there are a number of different places which an individual is not free to leave at will and which raise a question of de facto deprivation of liberty. It is paramount that, irrespective of what such places are called, the circumstances in which an individual is detained are examined so as to determine whether he or she is in fact at liberty to leave such a place at will. If not, it is paramount that all the safeguards applicable to situations of deprivation of liberty are in place so as to guard against any arbitrariness.[5]

53. The Working Group has come across such examples in the context of immigration detention. There is an increasing number of countries that hold irregular migrants in various temporary or permanent settings, such as holding rooms, reception centres and shelters. While not officially called "detention centres", those places are in fact closed institutions and individuals kept in them are not at liberty to leave, which makes such places de facto detention places. Therefore, all the safeguards that are in place, or should be in place, to guard against arbitrary deprivation of liberty must be respected in relation to every person held in such a setting.

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[2] See Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 10.

[3] See A/HRC/30/37, para. 9.

[4] See Human Rights Committee general comment No. 35 (2014), para. 6.

[5] Ibid., para. 12.

54. Equally, the Working Group is mindful that some countries have introduced and continue to introduce stringent counter-terrorism measures, of which so-called anti-radicalization measures form an important part. Such measures may include establishing dedicated units within prisons or even separate establishments, such as anti-radicalization centres, to hold not only those suspected or convicted of terrorist offences, but also those considered to be "radicalized" or "at risk of radicalization". It is sometimes presumed that people would commit themselves voluntarily to such centres, which would seemingly exclude such places from the scope of the places of deprivation of liberty. However, in most cases, there may be adverse consequences for individuals who do not commit themselves voluntarily and therefore questions surrounding what constitutes "voluntary commitment", the consequences for those who do not volunteer to be committed or the options to leave, become paramount.

55. The Working Group is aware that there are a variety of health-care and social care settings that are increasingly used for different health-related conditions. They include but are not limited to social care homes for older persons, care facilities for those with dementia and private institutions for people with psychosocial disabilities. It is increasingly aware of persons with disabilities being detained in psychiatric hospitals, nursing homes and other institutional settings, or forced treatment in prayer camps to "cure" disability, and of persons subject to physical and chemical restraint in the community. The Working Group reiterates that it is contrary to the provisions of the Convention on the Rights of Persons with Disabilities to deprive a person of his or her liberty on the basis of disability (art. 14). It also reiterates that every State retains a positive duty of care in relation to those on its territory and under its jurisdiction and that a State cannot absolve itself of this responsibility in relation to those in privately run institutions.

56. The Working Group wishes to emphasize that the deprivation of liberty is not only a question of legal definition, but also of fact. If the person concerned is not at liberty to leave, then all the appropriate safeguards that are in place to guard against arbitrary detention must be respected and the right to challenge the lawfulness of detention before a court afforded to the individual.[6]

IV. Amendments to the methods of work

57. At its seventy-seventh session, the Working Group decided to present a new version of its methods of work (A/HRC/36/38). The members agreed to update the list of relevant international instruments and other applicable standards and to introduce a page limit of 20 pages for communications from sources and Government responses.

V. Conclusions

58. **In the reporting period, the Working Group continued to assess its procedures, which translated into some changes to its methods of work. Some changes did not warrant any amendment to the methods of work, representing instead improvements to internal procedures. Through better use of its digital tools, the Working Group is working more efficiently between its three annual sessions. The Working Group is also working continuously to streamline the process for receiving and responding to requests for its action, always keeping in mind the need to work as effectively and promptly as possible and to keep all parties informed.**

[6] See A/HRC/30/37, para. 2. See also A/HRC/19/57, paras. 59 and 61.

59. The Working Group is working on addressing the large number of submissions received, including through its regular communications procedure. To that end, the adoption of opinions has been marked as a priority, and the Working Group is considering other options in order to address its backlog. As such, the Working Group strives to uphold the trust of victims, who continue to seek its assistance to remedy violations of their right to liberty.

60. At its seventy-sixth session, held in August 2016, the Working Group developed a new follow-up procedure intended to ensure that it is able to track the implementation of recommendations made in its opinions and inform the Human Rights Council of the progress made by Governments in addressing cases involving the arbitrary deprivation of liberty. The Working Group will continue to refine that procedure and other aspects of its ability to follow up on the recommendations made in its opinions, during country visits and in its reports following such visits. Throughout 2016, and in accordance with paragraph 33 of its methods of work, the Working Group has also considered its procedures on how to cooperate with other special procedure mandate holders when issues concerning their work are raised in the opinions of the Working Group and during its country visits.

61. In that context, it is unfortunate that such positive developments are met with a less than enthusiastic response from various Member States. For example, States did not reply to the Working Group's communications and requests for information in 63 per cent of the cases in which the Working Group adopted an opinion in 2016. Recent reports of the special procedure mandate holders reveal a similar rate of response to urgent appeals sent by the Working Group alone or with other special procedure mandate holders.

62. The Working Group notes that such a lack of responsiveness raises a question about the aim of the Member States in creating the mechanism. Given that the Working Group was created to serve the needs of victims of arbitrary arrests and detention worldwide and for Member States to hold each other accountable, Member States must have intended for the mechanism to resolve the disputes brought by the victims. Thus, the opinions of the Working Group should be enforced in that same spirit, which is the expectation of victims when they approach the Working Group for assistance. That is also the motivation of the Human Rights Council when it reminds States to cooperate fully with the Working Group, as it did most recently in its resolution 33/30. It is therefore fair to conclude the present report with the expectation that the next report of the Working Group will reflect further cooperation by the States, both during the communications procedure, in terms of providing timely responses that speak meaningfully to the allegations made, and in the enforcement of the opinions of the Working Group.

VI. Recommendations

63. The Working Group reiterates the recommendations made in its previous reports.

64. The Working Group recommends that Member States increase their cooperation, especially through country visits, in their responses to urgent appeals and communications and by enforcing its opinions, with the view of preventing and/or ending arbitrary detention. The Working Group urges States to engage actively with its follow-up procedure with regard to the implementation of the recommendations made in its opinions.

65. With reference to Human Rights Council resolution 30/33, and in order to allow the Working Group to fulfil its mandate in an effective and sustainable manner, the Working Group encourages Member States to continue to provide it with the necessary human and material resources.

66. The Working Group calls upon the States concerned to take appropriate measures to prevent acts of reprisals against individuals who have been the subject of an urgent appeal or opinion or whose cases have brought about a recommendation of the Working Group, and to combat impunity by bringing perpetrators to justice and by providing victims with appropriate remedies.